To: Connecticut General Assembly Human Services Committee

Comments re: Bill No 5250: An Act Concerning Contributions from Spouses of Institutionalized Medicaid Recipients

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My name is Amy E. Orlando. I am an attorney focusing in the areas of Elder Law, Estate Planning Probate and Special Needs.

I am opposed to Bill #5250, which Bill seeks to include a Community Spouse's nontaxable annuity income as countable income for purposes of calculating a Community Spouse's contribution toward the long-term care cost of his or her Institutionalized Spouse.

Title 42, U.S.C. §1396r-5(b)(1) states that no income of a Community Spouse shall be deemed available to the Institutionalized Spouse, thus it is my opinion based on the law that no contribution may be sought from the Community Spouse's income for the Institutionalized Spouse's care at all, let alone the expansion to nontaxable income as suggested by this Bill.

Despite Federal law just cited, Connecticut has included a spouse as a "Legally Liable Relative", and has a process by which it seeks a contribution from a Community Spouse's TAXABLE income to pay for an Institutionalized Spouse's care. Section 17b-81 (c) allows the Commissioner of Social Services to determine a legally liable relative contribution for the spouse of an institutionalized recipient of Medicaid only when such spouse has income in excess of (1) the minimum monthly needs allowance or (2) the monthly needs allowance for such spouse as determined by the commissioner, through a fair hearing or court proceeding, and law establishes a uniform contribution scale under Sec. 4a-12-2, wherein the assessment of liability is determined, in simple terms, to be twelve per cent of the community spouse's TAXABLE income which exceeds the State median income for two people, less any extraordinary support the Community Spouse provides that would not need be provided a healthy spouse.

The minimum monthly needs allowance, which is 150% of the FPL for a household of 2, is only a modest $1,991.25 this year, so the potential pool of Community Spouses from whom the State could seek contribution is already very large, especially when considering Federal law prohibits seeking contribution from any Community Spouse.

Through this Bill #5250, the State is now seeking to expand the Legally Liable Relative calculation to include NONTAXABLE income, as well as TAXABLE income, when to seek contribution from either taxable or nontaxable income of a Community Spouse violates Federal Law.

This Bill is the State's attempt to circumvent both Federal law, and Connecticut case law, which allow for a community spouse to purchase a Single Premium Immediate Annuity (SPIA) with his

or her assets which exceed the Community Spouse Protected Amount (CSPA), as long as the SPIA meets strict criteria, including a requirement that the State of Connecticut, Department of Social Services, be named as the primary beneficiary of any assets remaining in the SPIA after the death of the Community Spouse, for the total amount of Medical Assistance paid on behalf of the Institutionalized Spouse, in the manner required by Title 42, U.S.C. §1396 P(C)(1)(F). (See also, *Lopes v. Department of Social Services, 696 F3d 180, 2012 WL 4495500, Case No. 10-3741-cv (Oct. 2, 2012).* Experience in my practice, and through reports from colleagues, have been that the Department has sought a Legally Liable Relative contribution from several Community Spouses, each having purchased SPIAs with their own nonqualified funds, in order to obtain eligibility for Medicaid for their respective spouses, resulting in income streams which were nontaxable, but because the current Legally Liable Relative calculation only considers taxable income, the State was unable to obtain a contribution from those Community Spouses. This Bill is the State's attempt to amend their current Legally Liable Relative calculation to expand and include nontaxable income in the future.

The purpose of the current law, allowing income of a Community Spouse to be protected for the Community Spouse, is to avoid impoverishing the Community Spouse. When one spouse enters a nursing home and receives Medicaid benefits, that spouse's income is expected to be paid to the nursing home as his/her "co-pay"-the State calculates an Applied Income, which represents the Institutionalized Spouse's gross income, less a $60/month personal needs allowance and the ability to continue to pay for other health insurance premiums-and as such, the Community Spouse is already, in most cases, forfeiting a good portion of his/her household income to the nursing home to the extent that he/she no longer has the Institutionalized Spouse's income available to pay the household expenses. Viewing the married couple as an Assistance Unit, as the State does in a Medicaid setting, that Assistance Unit is already contributing toward the cost of the nursing home care due to the reduction in income available to the Assistance Unit to pay for other expenses the Community Spouse has in order to maintain living in the community.

Already contributing the Institutionalized Spouse's Applied Income, along with the requirement that the SPIA pay any remaining monies, if any, therein when the Community Spouse dies, are contributions enough for the Assistance Unit. To pass this Bill and broaden the assets at risk to pay for an Institutionalized Spouse's care is not only contrary to Federal Law, but it is overreaching by the State.

On behalf of myself, my clients and Connecticut residents, I recommend rejection of Bill #5250 to disallow including a community spouse's nontaxable income from an annuity in the calculation of the Legally Liable Relative contribution.